

REMARKS

These remarks and the accompanying amendments are responsive to the Office Action mailed January 11, 2005 (hereinafter, the "Office Action"), having an initial period for response that expired on April 11, 2005. A petition and fee for a one-month extension of time extending the period for response until May 11, 2005 accompanies this response. At the time of the last examination, Claims 1-5 and 7-35 were pending. By this amendment, Claims 8-16, 19-21, 24, 25 and 32-35 are cancelled, and Claims 36 and 37 are added. Accordingly, upon entry of these amendments, Claims 1-5, 7, 17, 18, 22, 23, 26-31, 36 and 37 will be pending. Each of the independent Claims 1, 4, 5, 17 and 28 are amended herein.

As an initial matter, section 41 of the Office Action indicates that Claims 4 and 5 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4 and 5 have been so rewritten and thus should be in allowable form. Other than these, the only independent claims now at issue are Claims 1, 17 and 28.

Section 3 of the Office Action objected to the drawings as not including several features of the claims. Each of the claims mentioned have been cancelled by this response. Accordingly, the objection to the drawings is rendered moot.

Section 4 of the Office Action objects to Claim 11 due to several informalities. Claim 11 is cancelled herein and thus this rejection is rendered moot.

Section 5 and 6 of the Office Action rejects Claim 16 under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 16 is cancelled herein rendering this rejection moot.

Section 7 of the Office Action rejects Claims 1, 7, 17 and 27-32 (including each of the independent Claims 1, 17 and 28) under 35 U.S.C. 103(a) as being unpatentable over an article authored by Graham Chapman entitled "The Linux Bootdisk HOWTO" (hereinafter referred to simply as "Chapman") in view of an article authored by Marc Vuilleumier Stückelberg (hereinafter referred to simply as "Stu"). The rejection is moot for cancelled Claim 32, but stands for Claims 1, 7, 17 and 27-31.

Independent Claim 1 (as amended) recites a "method for loading and running pre-boot code on a computer that is configured to attempt to boot from a bootable source other than a harddisk before attempting to boot **from the harddisk**" (emphasis added). As recited, the pre-boot code is retrieved "from a file **on the harddisk**" . . . "**without the file system being operational on the computer**" (emphasis added). Then, I/O requests for the bootable source are redirected to the random access memory. At least some of the pre-boot code is then read from the random access memory using at least one of the redirected I/O requests. The read pre-boot code is then executed.

Independent Claim 17 (as amended) recites, *inter alia*, a computer system that includes "a pre-boot code loading means for retrieving the **pre-boot code from the local hard drive** into the random access memory **without the file system first being operational on the computer system**" (emphasis added). Independent Claim 28 (as amended) recites, *inter alia*, "retrieving **pre-boot code from a file on a harddisk** into random access memory, wherein the file is managed by a file system and the act of retrieving is performed **without the file system first being operational on the computer**" (emphasis added).

In contrast, Chapman discusses the concept of ramdrive which it defines as "an emulated disk drive in main memory." There is motivation for this is so that the system runs faster. There is no teaching or suggestion in Chapman that the pre-boot code is present as part of the ramdrive, or that pre-boot code would even be necessary to emulate a disk drive in main memory. Furthermore, even if the emulated disk drive in main memory contains pre-boot code (which the undersigned does not concede as Chapman appears silent on this issue), there is no teaching or suggestion that this pre-boot code was retrieved from a file on the harddisk without the file system being operational on the computer. Even if Stu does teach, as the Office Action alleges, that when loading a floppy image into a ramdisk, the I/O is redirected using to use the floppy image in the ramdisk, and even if this teaching is combined with Chapman¹, the combination still lacks as the combination does not teach or suggest that the emulation of the floppy necessarily involves pre-boot code, or that the pre-boot code was acquired from a harddisk without the use of a file system.

Therefore, independent Claims 1, 17 and 28, are not unpatentable over even the combination of Chapman and Stu. Claims 7, 27 and 29-31 depend from one of Claims 1, 7, and 28 and thus are not unpatentable over this combination for at least the reasons provided for Claims 1, 17 and 28. Accordingly, the applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of Claims 1, 7, 17 and 27-31.

Section 16 rejects Claims 2 and 3 under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Stu as applied to Claim 1, and further in view of an e-mail drafted by an individual using the screen name Opiate entitled "how to make a Dos boot disk using win 95???"

¹ The applicants do not concede that the combination of Chapman and Stu is appropriate. However, since even the combination does not teach or suggest all of the recited claim features, an argument against the combination is not necessary for a response to the rejection. Thus, the lack of such an argument should not be seen as acquiescing to the combination. The applicants may, if necessary, argue against the combination at some future time.

(hereinafter referred to as "Opiate"). Although Opiate teaches how to create a DOS boot disk, Opiate does not teach or suggest those features of Claims 1, 17, 28 that are mentioned above as lacking by the combination of Chapman and Stu. Thus, even if Opiate is combined², Claim 1 is not unpatentable over the combination. Thus, Claims 2 and 3, which depend from Claim 1, are not unpatentable over the combination for at least the reasons provided for Claim 1.

Section 18 rejects Claims 8 and 25 under 35 U.S.C. 103(a) as being unpatentable over the combination of Chapman and Stu, and further in view of an e-mail authored by a person holding the screen name "Pete" for an e-mail entitled "Re: Ram Disk?". This rejection is moot in light of the cancellation of Claims 8 and 25.

Section 21 rejects Claims 9, 10 and 18 under 35 U.S.C. 103(a) as being unpatentable over Chapman and Stu, and further in view of an e-mail authored by Bruce Bigby entitled "Increased memory and caching ... ramdisk the answer" (hereinafter "Bigby"). The rejection is moot with respect to cancelled Claims 9 and 10, but remains with respect to Claim 18. Bigby discusses some tips for creating and using a ramdisk, but does not discuss those features of Claim 17 described above as being lacking from the combination of Chapman and Stu. Thus, even if Chapman, Stu and Bigby were combined³, Claim 17 would not be unpatentable over the combination. Therefore, Claim 18, which depends from Claim 17, would not be unpatentable

² The applicants do not concede that the combination of Chapman, Stu and Opiate is appropriate. However, since even the combination does not teach or suggest all of the recited claim features, an argument against the combination is not necessary for a response to the rejection. Thus, the lack of such an argument should not be seen as acquiescing to the combination. The applicants may, if necessary, argue against the combination at some future time.

³ The applicants do not concede that the combination of Chapman, Stu and Bigby is appropriate. However, since even the combination does not teach or suggest all of the recited claim features, an argument against the combination is not necessary for a response to the rejection. Thus, the lack of such an argument should not be seen as acquiescing to the combination. The applicants may, if necessary, argue against the combination at some future time.

over the combination. Accordingly, the applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of Claim 18.

Section 24 rejects Claims 11, 12, 19 and 24 under 35 U.S.C. 103(a) as being unpatentable over Chapman and Stu, and further in view of an e-mail authored by Joe Porkka entitled "boot Disk Optimizer". The rejection is moot due to the cancellation of these claims.

Section 28 rejects Claims 13, 21 and 33 under 35 U.S.C. 103(a) as being unpatentable over Chapman, Stu, and Opiate, and further in view of Mary. The rejection is moot due to the cancellation of these claims.

Section 31 rejects Claims 14, 15, 22, 23, 34, and 35 under 35 U.S.C. 103(a) as being unpatentable over Chapman, Stu, and Opiate, and further in view of Dalton. The rejection is moot with respect to cancelled Claims 14, 15, 34 and 35, but remains with respect to Claims 22 and 23. Dalton does not discuss those features of Claim 17 described above as being lacking from the combination of Chapman and Stu. Thus, even if Chapman, Stu and Dalton were combined⁴, Claim 17 would not be unpatentable over the combination. Therefore, Claims 22 and 23, which depend from Claim 17, would not be unpatentable over the combination. Accordingly, the applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of Claims 22 and 23.

Section 35 rejects Claim 16 under 35 U.S.C. 103(a) as being unpatentable over Chapman and Stu, ate, and further in view of an e-mail drafted by Brad Smallen entitled "booting NT off floppy (bootloader on floppy, NT on scsi id 3)". The rejection is moot due to the cancellation of the claim.

⁴ The applicants do not concede that the combination of Chapman, Stu and Dalton is appropriate. However, since even the combination does not teach or suggest all of the recited claim features, an argument against the combination is not necessary for a response to the rejection. Thus, the lack of such an argument should not be seen as acquiescing to the combination. The applicants may, if necessary, argue against the combination at some future time.

Section 39 rejects Claim 26 under 35 U.S.C. 103(a) as being unpatentable over Chapman and Stu, and further in view of United States patent number 5,724,550 issued to Stevens (hereinafter "Stevens"). Stevens does not discuss those features of Claim 17 described above as being lacking from the combination of Chapman and Stu. Thus, even if Chapman, Stu and Stevens were combined⁵, Claim 17 would not be unpatentable over the combination. Therefore, Claim 26, which depends from Claim 17, would not be unpatentable over the combination. Accordingly, the applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejection of Claims 26.

Therefore, favorable action is respectfully requested. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 26th day of May, 2005.

Respectfully submitted,



Adrian J. Lee
Registration No. 42,785
Attorney for Applicant
Customer No. 52120

AJL:ds
DS0000003334V001

⁵ The applicants do not concede that the combination of Chapman, Stu and Steven is appropriate. However, since even the combination does not teach or suggest all of the recited claim features, an argument against the combination is not necessary for a response to the rejection. Thus, the lack of such an argument should not be seen as acquiescing to the combination. The applicants may, if necessary, argue against the combination at some future time.